IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 475 OF 2003

IN

SUMMARY SUIT NO. 2538 OF 2000

M/s.Sah Petroleums Ltd. .. Plaintiffs

versus

M/s.Continental Corporation & Anr. .. Defendants

...

Mr.Chirag Balsara i/b Raj Baid for the plaintiff.

Mr.Snehal Shah i/b Sanjay Udeshi for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 7th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This Summons for Judgement is taken out by the plaintiff in a suit filed for recovery of the price of the goods supplied and interest thereon. I have perused the plaint and the documents annexed thereto.

From the statement of account annexed to the plaint, it is clear that the bill in respect of the last supply was issued on 19th April 1996. The suit is filed after a period of three years and therefore, prima facie barred by limitation.

3. The learned counsel for the plaintiff submits that the defendant acknowledged in writing the liability on 5th November 1999 (Exhibit-E to the plaint) That acknowledgement is also beyond the period of three years from 5th October 1999 and therefore, would not extend the period of limitation u/s.18 of the Limitation Act. Same is the case in respect of the alleged acknowledgement dated 19th January 2000 at Exhibit-F to the plaint. The learned counsel for the plaintiff however submits that the writing Exhibit-F amounts to a contract to pay a time barred and is valid u/s.25 of the Contract Act. If it is pleaded as a contract then it is not properly stamped under Article 5(h) of the Bombay Stamp Act.

4. The defence raised by the defendant that the suit is barred by limitation cannot be said to be a defence of no substance. At the trial, the plaintiff would be required to prove that the suit is within

limitation. It is clarified that the observations made here to the effect that suit prima facie appears to be barred by limitation are only for the purpose of considering the defendant's claim of leave to defend and not for the purpose of expressing any final opinion as to whether the suit is within limitation.

5. For these reasons, the defendants are granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendants to file written statement within a period of one month.

D.G. KARNIK, J